

BIRMINGHAM CITY COUNCIL

LICENSING SUB – COMMITTEE A 4 FEBRUARY 2019
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 4 FEBRUARY 2019, AT 0930 HOURS, IN ELLEN PINSENT ROOM, COUNCIL HOUSE, VICTORIA SQUARE, BIRMINGHAM, B1 1BB

PRESENT: - Councillor Barbara Dring in the Chair;

Councillors Bob Beauchamp and Martin Straker-Welds.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Parminder Bhomra – Legal Services
Katy Townshend – Committee Services

NOTICE OF RECORDING

1/040219 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

2/040219 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests arising from any business discussed at the meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations to be recorded in the minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/040219 No apologies were submitted.

LICENSING ACT 2003 PREMISES LICENCE (REVIEW) – BARTLEY GREEN CONVENIENCE STORE, 2 GENNERS LANE, BIRMINGHAM, B32 3JL

Report of the Acting Director of Regulation and Enforcement.

(See document No. 1)

The following persons attended the meeting.

On behalf of West Midlands Police

PC Ben Reader – West Midlands Police

On behalf of the Premises Licence Holder

Imran Sadiq – Premises Licence Holder
Royston Seempalai – Business Owner
Patrick Burke – Agent

Those Making Representations

Garry Callaghan – Licensing Enforcement Officer
Nicola Swadkins – Home Office Immigration

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The Chair made introductions and outlined the procedure to be followed.

Bhapinder Nhandra, Licensing Section, made introductory comments relating to the documents submitted.

On behalf of Licensing Enforcement, Mr Garry Callaghan made the following points:-

- a) That they had concerns regarding the running of the premises and the business owner.
- b) They received intelligence from the Home Office Immigration Officer that they had the wrong sign on the shop when they carried out an investigation.
- c) That there was a male Indian National working behind the counter – whom did not have the correct immigration checks. They asked the Indian National who his employee was and he responded “Royston”, whom was later contacted and appeared in the shop later on.
- d) That it was all done under caution.
- e) That the gentleman also advised he was only being paid 6 pound an hour, which gave the officer cause for concern.
- f) When Royston later arrived in the shop he was unable to produce a summary of licence (premises licence), and subsequently they issued a Traders Notice.
- g) That the Premises Licence Holder (PLH) also owned the shop next door, but he was on holiday.
- h) That Royston said he had took over the business at the end of August, but no transfer of Premises Licence had taken place.

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- i) That the primary function was to enforce the objectives yet that man detained did not have the correct immigration status.
- j) That they had concerns in regard to the running of the premises.
- k) That the Traders Notice was issued to Mr Sadiq however, they were not sure if he had even been made aware.
- l) That they carried out a further visit on 21st November and none of the previous issued has been rectified, including breaches of the licence conditions. They requested CCTV which they were told was not available as they didn't have the pin code and they still did not have the summary licence available.
- m) That the police officer accounted further evidence.
- n) That under the Section 182 Guidance employing illegal workers was serious... the same category as possession of firearms, pornography. (quoted Paragraph 11.27)
- o) That Patrick Burke (agent for the PLH) forwarded the passport of the worker and this gave them huge concern over its validity. They were extremely concerned that it was counterfeit as it had a different date of birth and a different name to the man who had been detained.
- p) That since the visit Royston had supposedly took over yet there was no transfer of licence application submitted to Birmingham City Council (BCC) Licensing Team. They asked Royston to confirm where he applied to, to which he replied Dudley.
- q) Then in January there was a transfer application submitted, which was incomplete, and therefore, rejected.
- r) That there were also outstanding fees on the licence from last year – some £70.00.
- s) That the gentleman that was detained informed the officers he had been there just a week.
- t) That in result of all of the offences, revocation was the reasonable action.

On behalf of West Midlands Police PC Reader made the following points:

- a) That he was really surprised, BCC were leading on the immigration review.
- b) That £6p/h was undercutting the minimum wage and was a conscious decision by the manager as they knew the person did not have the right to work in the UK.

- c) That the payslips provided proved nothing, they were not payslips for the guy in question, which further proved he was working illegally.
- d) That Royston didn't hold a position of accountability for the premises.
- e) That Imran was the PLH/DPS and Royston was the business owner.
- f) That WMP carried out an inspection and Royston was present, therefore, they explained the reason for the visit. Royston explained he was the business owner and was managing the business on a commission basis for Imran. However, there was no contract and it was an informal agreement. Mr Imran Sadiq owned the Pizza place next door.
- g) That Royston clearly had a financial motivation, and no accountability.
- h) That because the licence wasn't his, there was no reason for him to abide by the licensing objectives. That whilst Royston had advised he was a personal licence holder, with vast experience when WMP asked to see his personal licence he failed to provide it. This disappointed the officer.
- i) That Royston, when asked, could not recite the Licensing Objectives.
- j) That the PLH was not comply with conditions of licence, and in January he was still not complying with them. The refusals book was empty, signage wasn't in position, little poly bags used for drug deals were found, disposable cups were also found.
- k) They also found loose balloons which were strange.
- l) That they had zero confidence in Royston, but all the accountability lay with Mr Sadiq.
- m) That the payslips provided were for Royston's other business.
- n) That even with the Traders Notice issued, they had still done nothing to rectify the issues.
- o) That they were asking for revocation.

In answer to Members questions, PC Reader made the following points:-

- a) That they found no drugs, but the fact the balloons were there and the way the premises was being managed raised questions.
- b) That 2 Trader's Notices were served on the PLH.
- c) That they just ignored what Gary told them.
- d) That there was no signage, which was a condition on the licence.

- e) That the licence should be revoked on the grounds of crime and disorder.

Mrs Nicola Swadkins, on behalf of Home Officer Immigration, made the following points:-

- a) That they had acted on information they received.
- b) That the sign on the outside of premises read “Lifestyle Express”.
- c) That upon visiting the premises she found one single male working and after questioning, he admitted to entering the UK illegally. He had been working there about a week and was employed by Royston. He had not displayed any documents to Royston to show he was legal to work in the UK.
- d) He confirmed he was being paid £6p/h and was working for hours without breaks.
- e) That she had spoken with Royston who said the male was a member of staff and had been working there 2-3 weeks. He also added that the male had displayed a French passport which was currently with the accountant so had no evidence.
- f) That the document was “indeed counterfeit” and was not the same details of the man detained.
- g) The male detained had since been released on bail after submitting further representations to stay in the UK. However, he has been bailed to an address linked to Mr Sadiq.
- h) That she would have major concerns about the premises continuing with a licence under Royston’s name and she supported Garry’s revocation.

PC Ben Reader advised that he would also not be happy with Royston holding the Premises Licence. That the revocation would be for Mr Sadiq’s licence, but Royston was running the premises, and managing it.

At this stage, 1033 hours, the meeting was adjourned to allow all parties and the Members to view some documents submitted which had not been served prior to the hearing. All parties left the meeting with the exception of the Members, Committee lawyer, and Committee Manager.

At 1037 hours the meeting was reconvened and all parties were invited to rejoin the meeting.

On behalf of the PLH, Mr Patrick Burke, made the following points:-

- a) That Royston took over the premises in October and had previously spent many years working at a Tesco’s, and had also ran successful Petrol stations with 24 hour Licenses. He had never had any issues previously.

- b) That he was running the premises prior to taking over the lease which was common practice in those circumstances.
- c) That he had not yet paid for the lease and therefore, that was why the licence had not been transferred.
- d) That the application, once submitted, was rejected, purely due to the review hearing being scheduled.

Mr Bhapinder Nandhra, Licensing Officer, advised Mr Burke that the application was rejected as there were incomplete sections and in addition, there was also an outstanding annual fee for the licence.

Mr Burke continued:-

- a) That what he was saying was that Mr Sadiq would not transfer the licence as the lease was yet to be taken over.
- b) That at the time of the visit from the Home Officer Immigration officer, Royston advised he had a copy of the passport, however, Nicola declined, saying she did not need to see it.
- c) That the man in the shop and the passport were the same person.
- d) That the notice that was missing was one asking customers to leave the premises quietly. He had the signage regarding challenge 25 policy and Royston was unaware of the policy and conditions already on the licence.
- e) That the male presented himself as a previous employee who had worked for Mr Sadiq and Royston also received his national insurance number and passport. The man had only worked there for a week prior to being detained and therefore, there were no payslips.
- f) That the reason they submitted payslips, was to show how he usually ran his businesses.
- g) That Royston did everything he could to avoid committing that offence.
- h) That he thought the passport was legal.
- i) That the man came to Royston and presented himself as the person in the passport.
- j) That £6p/h was false as he hadn't even been paid yet.
- k) He was on minimum wage.
- l) That the bags and balloons sounded suspicious but they were not they were simply sold to students for parties.
- m) That the plastic cups were used for tea and coffee.

- n) That the suggestion that the male had been released and bailed to an address linked to licence holder was something that the licensee knew nothing about. He had never even seen the guy before.

Mr Royston Seempalai advised that he would not have known the real name of the man, as he knew him by his passport name. That he received no notification that the Home Officer was requesting any documentation. That he had also not received the penalty issue.

Mrs Nicola Swadkins responded, by stating that the photograph she submitted was the man she saw.

Mr Royston Seempalai indicated that he looked at the man's facial features, nose, mouth and eyes and determined it was the same as the passport. That was the correct way of identifying someone. He employed 13 or more staff and did not want to employ illegal immigrants. He wanted to take over the company in order to try running a different premises – a convenience store.

Mr Burke added that Mr Sadiq knew nothing about the statement regarding the man being released to an address linked to Mr Sadiq.

Mr Sadiq explained that he had been running the business for 3-4 years but his family owner a pizza shop for over 10 years next door. He got into huge debt with the shop, so Royston took over. At the time of the issues with immigration, he was on holiday and he spoke with Garry. He had no idea that the application for transfer of the licence was going ahead and cooperated fully with Garry when he returned in order to sort it out. That Royston would not know the difference between a genuine and a counterfeit passport. That the shop could not operate without an alcohol licence.

Mr Royston Seempalai concluded that he had cooperated with Garry and had done all the things Garry had mentioned to him. Additionally he was ambitious and wanted to do the right thing.

Mr Burke added that the man presented himself to Royston as a previous employee.

In answer to Cllr Straker-Welds Mr Seempalai advised that when he worked for Tesco he often employed people with European passports.

In summing up, Mr Burke, on behalf of the PLH, made the following points:-

- a) That Royston was duped by an individual who was determined to work in the UK illegally.
- b) That he believed it was a genuine passport.
- c) That he has no issues at his other premises.

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In summing up Mrs Nicola Swadkins, on behalf of Home Officer Immigration, made the following points:-

- a) That when she spoke with Royston she told him they were there due to information regarding illegal workers. All questions were noted in her pocket book which Royston signed to confirm his answers to the questions. They served notice of liability with Royston when they left.
- b) That the address linked to Mr Sadiq where the man had been bailed to was the flat above the Pizza shop.

PC Ben Reader, on behalf of WMP, made the following points:-

- a) That it was great that they had replaced the notices, but it had taken 3 visits.
- b) That it was a concern that Royston was not aware of the conditions on the licence, yet he was running the premises.
- c) That the employee was employed previously at the shop and therefore, that was the first offence.
- d) That there was no documentation for the employee, or for the lease.
- e) That Mr Sadiq was having financial trouble and needed to give the premises up, yet no contract in place to sublet the premises. It could not be that critical. Why would anyone let someone run a premises on their behalf and not have a contract in place.
- f) That everyone was blaming someone else.

Mr Garry Callaghan, on behalf of Licensing Enforcement, made the following points:-

- a) That in communication about the licence transfer he asked Royston about how long he had been at the premises, he said since August, yet today they were saying October.
- b) That the transfer form was incomplete and incorrect.
- c) That he first sent it to Dudley Council.
- d) That he did not have a clue, and did not even know the licensing objectives.
- e) That he had serious concerns over the breaches of conditions, and just had no overall confidence in the management of the premises.

Mrs Nicola Swadkins interjected explaining that they were not given anything on the day of the visit, it was the first she had heard about a National Insurance number.

Mr Garry Callaghan confirmed that they were informed by the man that he was working for £6p/h.

Mr Burke concluded that the documents, including National Insurance Number, was offered at the time of the visit but they said they did not need them.

At 1117 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1159 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

4/040219 **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Imran Ali Sadiq in respect of **Bartley Green Convenience Store, 2 Genners Lane, Birmingham, B32 3JL** upon the application of the Licensing Enforcement Authority, this Sub-Committee hereby determines that the licence be revoked, in order to promote the prevention of crime and disorder objective in the Act.

The Sub-Committee's reasons for revoking the licence are due to concerns by the Licensing Enforcement Authority, Home Office Immigration, and West Midlands Police regarding criminal activity connected to the licensed premises which members noted, should be treated particularly seriously as per section 182 Home Guidance at paragraphs 11.27 and 11.28.

The Sub Committee heard from all parties and concluded that the premises licence holder who holds ultimate responsibility was not managing the premises in accordance with the above mentioned licensing objective. Members were concerned to find there was no documentation in place to support the claims of an agreement in respect of running the licensee's business by another party for a number of months. This was further exacerbated by the fact both individuals were premises licence holders that appeared to have no knowledge of the conditions of the premises licence and appeared to abdicate their responsibility in carrying out due diligence checks of past and present employees at the licensed premises in question.

There was too many discrepancies in the verbal accounts given by two premises licence holders, and excuses for the way the premises was being managed which the members could not attach any meaningful weight to.

Members found the Responsible Authorities submissions in respect of the individuals persuasive instead. The Responsible Authorities had no confidence in both individuals concerned to uphold and promote the licensing objectives despite the various visits undertaken at the premises and traders notice issued since the discovery of an illegal worker.

The Sub-Committee gave consideration as to whether it could modify the conditions of the licence, remove the Designated Premises Supervisor or suspend the licence for a specified period of not more than 3 months, but was not satisfied

given the evidence submitted, that the licensing objective would be properly promoted following any such determination.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 by the Secretary of State, the application for review, the written representations received and the submissions made at the hearing by the applicant, premises licence holder and their representative, and other responsible authorities.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision. The determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the appeal is disposed of.

**LICENSING ACT 2003 PREMISES LICENCE (TIME LIMITED – GRANT) –
JAMAICA EXPAT ASSOCIATION CIC, SUMMERFIELD PARK, SELWYN
ROAD, WINSON GREEN, BIRMINGHAM, B16 0HN**

Report of the Acting Director of Regulation and Enforcement.

(See document No. 1)

The following persons attended the meeting.

On behalf of the Premises Licence Holder

No one attended.

Those Making Representations

PC Deano Walker – West Midlands Police
Jennifer Downing – WMP Solicitor
Charlie Merrett – Barrister for WMP
Martin Keys - Environmental Health
Sheetal Panchmatia – Officer – West Midlands Police Fire Service (WMPFS)
David Elliot – WMFS Solicitor

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The Chair made introductions and outlined the procedure to be followed.

Prior to the hearing convening, the Senior Licensing Officer, Bhapinder Nandhra advised he had a preliminary point, which was in relation to the legal requirement for the applicant to have a notice issued in the newspaper. Mr Nandhra had contacted the applicant on several occasions with no success, in order to ascertain whether the applicant had proof of the newspaper notice. Whilst the applicant had complied with the blue notice requirements, and on the signed declaration on his application form that he has placed a public notice in a newspaper, he was however, not in attendance this morning to clarify the position.

The Committee Lawyer advised that if no proof was available, the Licensing Authority could not be satisfied the applicant has complied with the Regulations in respect of the Form etc of Applications and any Notices. Consequently, the Licensing Authority could not proceed with the hearing on the basis of there being a non-compliance with the Regulations that invalidated the application.

At this stage the Chairman advised that as it stood, the application was not validated and therefore, they would not be hearing the matter.

The meeting ended, and all parties left the meeting room.

5/040219

OTHER URGENT BUSINESS

There were no matters of urgent business.

The meeting ended at 1225 hours.

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CHAIRMAN